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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,583	11/27/2001	Geoffrey Alan Cleary	60136.0149USU1	7292

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EXAMINER	
VAN HANDEL, MICHAEL P	
ART UNIT	PAPER NUMBER
2424	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/994,583	**Applicant(s)** CLEARY ET AL.	
	Examiner MICHAEL VAN HANDEL	**Art Unit** 2424	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Michael Van Handel/
Primary Examiner, Art Unit 2424

Continuation of 11:

The examiner first notes that there are no new claim amendments in the record, despite Applicant's statement that the claims have been amended.

Regarding claims 1, 2, 12, and 28, the applicant argues that pausing a live program does not equate to recording a program in response to receiving a record request prior to a broadcast time of the audiovisual data. The examiner respectfully disagrees. Applicant specifically argues that pause only works if you are watching a program as it is being broadcast. The examiner notes; however, that the claim recites "in response to receiving a record request prior to a broadcast time of the audiovisual data" and does not recite prior to a broadcast time of a program. Ellis et al. discloses caching programs for playback by a user (p. 7, paragraphs 93-96). Since 15 minutes of data is prefetched and cached in response to a playback request and since this data is cached prior to broadcast to the user, the examiner interprets this playback request to be a "record request prior to a broadcast time of the audiovisual data," as currently claimed. Similarly, Ellis et al. discloses providing users with an opportunity to real-time cache programs. This allows users to view portions of a program they would otherwise not be able to view when, for example, they must momentarily leave the room in which the program is being shown. A user may indicate a desire to record a program on remote media server 24 by pressing a "PAUSE" key on remote control 40. When the user returns, remote media server 24 may play back the cached copy of the program while continuing to cache the remaining portion of the aired program until the program is over (p. 15, paragraph 165). The examiner also interprets this pressing of the PAUSE key to be "receiving a record request prior to a broadcast time of the audiovisual data," because the request for real-time caching occurs prior to the time the data is broadcast from the remote media server to the user.

Further regarding claims 1, 2, 12, and 28, the applicant argues that Ellis et al. does not disclose allocating a portion of memory for recording a portion of content having the variable duration, allocating an additional portion of memory to record a next portion of the content having the variable duration and determining when reception of the plurality of content having the variable duration has terminated and repeating said utilizing and said allocating said additional portion of memory until content having the variable duration is determined to have terminated so that all of said at least one of said plurality of content having a variable duration is stored. The examiner respectfully disagrees. Applicant specifically argues that often a program runs longer than the program guide indicates and that in such a scenario, the program will be cut off unless the user adds minutes to the recording window. The examiner notes; however, that the features upon which applicant relies (i.e., a program running longer than the program guide indicates) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's specification describes sporting events as content of variable duration (p. 10, lines 20-21 of Applicant's specification). Ellis et al. discloses that a user may record sporting events at the remote media server (p. 3, paragraph 60; p. 10, paragraph 122; p. 13, paragraph 148; & Fig. 18a). As such, the examiner maintains that Ellis et al. teaches storing content of variable duration, as currently claimed. Ellis et al. further disclsoes that a user may be able to cache programs in real-time. A user may indicate a desire to record a program on remote media server 24 by pressing a "PAUSE" key on remote control 40. A record request is then issued to remote media server 24. Remote media server begins recording the program at this point and until the program is finished or until the user fast-forwards to the end of the cached copy (p. 15, paragraph 165 & p. 19, paragraph 200). The examiner notes that the duration of the content changes over time as more of the content is cached, and that the total recorded duration may depend on whether the user fast-forwards to the end or not. This also meets the limitation of storing content of variable duration, as currently claimed. The examiner acknowledges Applicant's argument that that a recorded portion of content having variable duration is not the same thing as content of variable duration; however, the examiner respectfully disagrees. There is nothing in the claim language to distinguish "content of variable duration" from stored content where the length of the content changes as it's recorded.

Still further regarding claims 1, 2, 12, and 28, the applicant argues that the prefetching of 15 minutes of content of Ellis et al. is not the same as allocating 15 minutes for recording. The examiner respectfully disagrees. Ellis et al. discloses prefetching and caching the first 15 minutes of data. As the user advances towards minute 15, the next 15 to 30 minutes are prefetched and cached. The remote media server continually prefetches and caches the next 15 minutes of data (p. 7, paragraph 96). Since an additional 15 minutes of content is cached at a time, an amount of memory for storing the 15 minutes of data is being allocated for recording at a time. The examiner is not equating the fetching to the recording, but is equating the caching to the recording. The applicant further argues that in fetching previously recorded material, Ellis et al. knows the duration of the program. As noted previously, the examiner interprets sports programs and cached content of varying length to be "content of variable duration," as currently claimed. The examiner acknowledges Applicant's argument that the point of the invention is that the duration of the program to be recorded is unknown and such content has a variable duration that may extend beyond the time indicated in the program guide; however, the examiner notes that the features upon which applicant relies (i.e., duration of the program is unknown and such content has a variable duration that may extend beyond the time indicated in the program guide) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Still further regarding claims 1, 2, 12, and 28, the applicant argues that Ellis et al. does not disclose determining when reception of the plurality of content having the variable duration has terminated, because the program guide is unaware of a programming extending beyond the window in the program guide. The examiner notes; however, that the features upon which applicant relies (i.e., program guide is aware of a programming extending beyond the window in the program guide) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Still further regarding claims 1, 2, 12, and 28, the applicant argues that Ellis et al. fails to suggest deallocating any allocated portion of memory not used to record a variable length program. The examiner respectfully disagrees. Ellis et al. discloses deleting a program which is not accessed by a user for a predetermined period of time (p. 16, paragraph 169). The examiner notes that deletion of a program which is not a sports program or cached program (not a variable length program) meets the limitation of deallocating an allocated portion of memory not used to record a variable length program. The examiner acknowledges Applicant's argument that Ellis et al. discloses deleting

a program. The examiner notes; however, that memory allocated for and storing a non-sports or non-cached program is memory "not used to record the at least one of said plurality of content having a variable duration." That is, there is nothing in the claim language tying the deallocation step to the memory allocated for storage of content of variable duration. In storing a regular program, Ellis et al. allocates a portion of memory for storage of that program. Ellis et al. discloses that when that content hasn't been used for a period of time, the content is deleted. That is, the portion of memory allocated for storage of that program is deallocated. As such, deletion of any content not having a variable duration meets the deallocating limitation, as currently claimed.